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100TH CONGRESS
2d Session

SENATE

REPORT
100-539

ARIZONA-FLORIDA LAND EXCHANGE ACT OF 1988

SEPTEMBER 22 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 4519]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 4519) to provide for the disposition of certain lands in Arizona under the jurisdiction of the Department of the Interior by means of an exchange of lands, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the Act, as amended, do pass.

The amendments are as follows:

1. On page 2, line 1, delete "Intertribal", insert "InterTribal".
2. On page 2, line 5, delete "Intertribal", insert "InterTribal".
3. On page 2, line 14, after the word "Company", insert ", Collier Development Corporation".
4. On page 2, line 18, after "prises", insert ", Collier Development Corporation".
5. On page 3, line 9, delete "Intertribal", insert "InterTribal".
6. On page 3, line 12, delete "Intertribal", insert "InterTribal".
7. On page 3, line 19, after "title", insert "to".
8. On page 4, line 4, delete "through 15", insert "and 14".
9. On page 4, line 12, delete "Education".
10. On page 4, line 14, delete "201(a)(2)", insert "202(a)(2)".
11. On page 6, line 12, delete "Intertribal", insert "InterTribal".
12. On page 6, line 18, delete "Intertribal", insert "InterTribal".
13. On page 6, line 24, delete "Intertribal", insert "InterTribal".
14. On page 6, lines 24–25, delete "Education" in both places in which it appears.
15. On page 9, line 2, delete "Intertribal", insert "InterTribal".
16. On page 14, line 24, delete "Phoenix," and insert "Phoenix".
17. On page 21, line 14, delete "Collier", and insert "Collier,".

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18. On page 22, line 7, delete "(l)", insert "(k)".
19. On page 25, lines 12–13, delete "of the Colliers' offer", insert "by Collier of the offer of the United States".
20. On page 29, line 6, strike "1988", and insert "1991".
21. On page 29, line 7, strike "1988", and insert "1991".
22. On page 29, lines 8 and 9, strike the words, "Within 30 days after enactment of this Act," and insert in its place, "By January 30, 1991".
23. On page 29, line 13, strike "1988" and insert "1991".
24. On page 29, line 17, strike "upon the date of enactment," and insert "January 30, 1991".
25. On page 29, lines 17 and 18, strike "September 2, 1988" and insert "March 1, 1991".
26. On page 29, line 24, strike "1987–88" and insert "1989–90".
27. On page 31, line 23, strike "1990" and insert "1993".
28. On page 32, line 1, strike "1988" and insert "1991".
29. On page 32, line 5, strike "1989" and insert "1992".
30. On page 32, line 7, strike "1988" and insert "1991".
31. On page 32, line 13, strike "1990" and insert "1993".
32. On page 32, line 15, strike "1988" and insert "1991".
33. On page 34, line 9, strike "1988" and insert "1991".
34. On page 37, line 12, delete "in".
35. On page 37, line 13, delete "to which they".
36. On page 38, line 7, delete "(3)", insert "(4)".

PURPOSE OF THE MEASURE

The purpose of H.R. 4519 is to facilitate the acquisition of 107,799 acres of private land in Florida for addition to three conservation system units and to provide for the orderly disposition of the Phoenix Indian High School property in Phoenix, Arizona. These purposes are achieved by an exchange of the properties. Lands held by the Barron Collier Company, Collier Enterprises and the Collier Development Corporation would be added to the Big Cypress National Preserve, the Florida Panther National Wildlife Refuge, and the Ten Thousand Islands National Wildlife Refuge. The Colliers also will pay $34.9 million in cash to the United States. In exchange, they will receive 68.41 acres of land now occupied by the Phoenix Indian High School.

BACKGROUND AND NEED

H.R. 4519 ratifies an Exchange Agreement negotiated over a period of several years between the Department of the Interior and the Collier family. This agreement was executed on May 15, 1988. The Exchange Agreement provides for the United States to convey 68 acres of the Phoenix Indian School property in Phoenix, Arizona, to the Colliers in exchange for 107,799 acres of Florida land owned by the Colliers and approximately $34.9 million in cash. Because the Department does not have authority to execute an exchange involving land in more than one state (an "interstate" exchange), an Act of Congress is required.

Description of the Florida properties

Three Florida partnerships, Barron Collier Company, Collier Enterprises, and the Collier Development Corporation ("Collier"), have significant land holdings in southern Florida. As part of the land exchange, Collier will convey four separate parcels to the United States all of which have extremely high conservation values.

Two parcels totalling 83,070 acres will be added to the Big Cypress National Preserve, as authorized by Public Law 100–103, the Big Cypress National Preserve Addition Act. The larger of the two parcels consists of 70,010 acres to be added to the northeast corner of the Preserve, on both sides of State Road 84. A smaller 13,060 acre strip will be added along the western border of the Preserve, on the eastern side of State Road 29. Preservation of the northeastern parcel is considered essential to the fragile hydrology of south Florida, including the source of drinking water for millions of residents in Dade and Broward counties. Areas of the western strip addition serve as the habitat for the endangered Florida panther and other threatened and endangered species.

Adjacent to the northwest corner of the Big Cypress National Preserve, 5,109 acres will be added to the Florida Panther National Wildlife Refuge. The United States has already initiated the purchase of 25,477 acres of the Refuge, so the acquisition will result in a total Refuge size of 30,586 acres. This Refuge contains important habitat for the endangered Florida panther, as well as a number of other threatened and endangered species of plants and animals.

The fourth parcel to be exchanged consists of 19,620 acres for creation of the Ten Thousand Islands National Wildlife Refuge. The uplands portion consists of 15,384 acres, with the other 4,236 acres possibly situated below the mean high water mark. This area serves as a productive habitat for a wide variety of fish and wildlife species, including the endangered Florida manatee and the bald eagle, and includes large undisturbed areas of cypress and mangrove.

Description of the Phoenix Indian High School property

The Phoenix Indian High School property occupies almost 111 acres in downtown Phoenix. The facility has served as a boarding school for Indian students since 1891. The school property is not in the public domain and is not held in trust by the United States for any of the Indian Tribes. The property was originally purchased with a $6,000 appropriation from Congress and $3,000 raised by the residents of Phoenix.

H.R. 4519 directs the Secretary to close the school no earlier than June 1, 1991, and no later than September 1, 1991. Of the total acreage, 20 acres will be conveyed to the City of Phoenix; the Veterans Administration will receive administrative jurisdiction over 11.5 acres; the State of Arizona will be eligible to receive 4.5 acres; 6.5 acres will be reserved for rights-of-way. The remaining 68.41 acres are to be conveyed to Collier or, under procedures provided in H.R. 4519, to a qualifying cash purchaser. The conveyances to the Veterans Administration, the City of Phoenix and the

State of Arizona are contingent upon the exchange or sale of the remaining property.

Valuation of the Florida properties

The valuation of the Florida properties to be acquired by the United States was negotiated between the Department of the Interior and Collier. The final figure of $45.1 million for all parcels was 7.67 percent over the Department's official appraised value and 23.17 percent below that sought by Collier.

A portion of the Ten Thousand Islands acreage (4,236 acres) is possibly situated below the mean high water mark. Under Florida law, the State owns all land below the mean high water mark. Collier will convey the 4,236 acres of land below the mean high water mark to the United States by quitclaim deed. Collier will convey the 15,384 acres of land in the Ten Thousand Islands area above the mean high water mark, as well as the remaining 88,179 acres in the exchange, to the United States by warranty deed. To reflect the uncertainty of ownership of the land below the mean high water mark, the Department of the Interior stated that the value of the underwater portion of the property is not included in the total value of the Ten Thousand Islands parcel. Therefore, although Florida may have title to land below the mean high water mark, the United States gave no consideration for that portion of the property and assumes no risk for its loss. The negotiated value of the uplands portion of the Ten Thousand Islands parcel is $5.8 million.

The value of the larger addition to the Big Cypress National Preserve was determined by an appraisal approved by the State of Florida to determine severance damage and the remainder value of Collier's property resulting frm the planned construction of Interstate 75. The State authorized three appraisals of the property, approving the appraisal which assigned the highest value of the Collier property, and assigned a remainder value of the property in excess of the $26.6 million value assigned to the property in the exchange negotiations.

At the request of Congressman Morris Udall, the General Accounting Office (GAO) issued a report analyzing the appraisals of both the Florida and Phoenix Indian High School properties (GAO/GGD–88–85). The GAO report concluded that the appraisals for the strip addition to the Big Cypress National Preserve, the Florida Panther National Wildlife Refuge Addition and the Ten Thousand Islands National Wildlife Refuge lands all met professional appraisal standards and were obtained in compliance with the Department of the Interior's guidelines on real estate appraisals.

Valuation of the Phoenix Indian School property

The most difficult problem in assessing the comparative values of the Arizona and Florida properties concerns the determination of the Phoenix Indian School property value. The potential value varies dramatically depending upon the zoning restrictions imposed and other factors essentially unascertainable until such time as a developer presents a development plan for the property and such plan is approved by the appropriate authorities. The property is currently zoned for residential development and the City General

Plan shows the property as open space. The City of Phoenix has maintained that, given the extreme importance of the property to the future of central Phoenix, it is unwilling to rezone the property in the absence of a specific developer with a specific development plan. The City has entered into a formal agreement with Collier for a process, unprecedented for Phoenix, to plan and zone the property in question.

The Department of the Interior obtained two appraisals of the Phoenix Indian School site. They arrived at very different conclusions of the potential value of the property. The Department selected the lowest appraised value, $122.2 million, as the approved appraisal value of a 104-acre parcel (the school property less the reservation for rights-of-way).

The GAO report concluded that the appraisal relied upon by the Department was a competent one that met professional standards in all respects. GAO asserted the appraisal suffered, however, from a lack of specific information about zoning, allowable building density and other factors important to a more conclusive determination of the property's value.

The Exchange Agreement and H.R. 4519 provide that Collier has 3 years to accept the offer of the United States to proceed with the land exchange. During this period, the City of Phoenix and Collier will be involved in the process set forth in the Planning and Zoning agreement to determine a development plan for the property. Upon completion of that process, the City will be able to rezone the property and Collier may initiate a process to proceed with the land exchange.

Under the legislation, when Collier initiates this process, the entire exchange property will be, in essence, auctioned to the highest bidder. At that time, third parties will be allowed 90 days to make an all-cash offer in excess of the $80 million value of Collier's land and cash offer. If Collier wishes to remain as a partner to the exchange, then it must match any qualifying high offer. Any increase in revenues resulting from a higher sale price to Collier will be added to the tribal educational trust funds.

Should Collier decline to match the high qualifying offer, the property will be sold to the bidder offering the highest purchase price. The cash proceeds of that sale will be used to purchase Collier's Florida properties at the already-stipulated price and to compensate Collier for its costs in the planning and zoning process. The balance will finance the Indian education trust funds.

If the actual value of the Phoenix Indian School property has appreciated beyond $80 million, then a potential purchaser will be willing to pay a price that reflects the increased value.

Closure of the Phoenix Indian school

The Secretary of the Interior is directed to close the Phoenix Indian High School no earlier than June 1, 1991, and no later than September 1, 1991. The Secretary is directed to notify the governing body of each Indian tribe affected by the closure of the school and the parent or guardian of each student enrolled in the school on January 1, 1991.

Disposition of the Phoenix Indian school property

Within three years after enactment of the legislation, Collier will have an option to purchase the Phoenix property under the terms of the Exchange Agreement. The basic terms of the Exchange agreement are that Collier will acquire the Phoenix Indian School property in exchange for Florida lands owned by Collier, which are to be included in the Big Cypress National Preserve and other conservation system units, and approximately $34.9 million to be used to establish two education trust funds.

The City of Phoenix will be given twenty acres of the property at no cost with the requirement that the land be permanently used to provide for public open space and recreation. The specific location of the twenty acres will be determined through the public planning process.

The Veterans Administration will be granted administrative jurisdiction over 11.5 acres of the Indian School property to allow for expansion of the VA hospital, which is adjacent to the southeast boundary of the school property. The Administrator of the Veterans Administration is directed to participate in the public planning process with the developer and the City, and it is expected that a mutually agreeable location for the VA parcel will be determined thority to make the final determination regarding the configurathority to make the final determination regaridng the configuration and location of the VA parcel.

The State of Arizona will be eligible to receive 4.5 acres of the school property to provide for the construction of a State nursing home for veterans, with the location of the parcel to be determined through the public planning process. If the State does not make proper application to the VA for construction of the facility or fails to adequately fund its construction, then the land will revert back to the United States.

The Secretary of the Interior then must give public notice that the remaining 68.41 acres of the Phoenix Indian School property is being offered for sale. Potential buyers must agree to pay for the property in a single cash payment, enter into the trust fund agreement, and enter into an identical planning and zoning agreement with the City of Phoenix. The minimum acceptable price is a cash amount that will provide for the purchase of Collier's Florida properties, the money for the trust funds, and a reimbursement of Collier's costs incurred in connection with the public planning process.

Establishment of trust funds

The bill provides for the establishment of two Indian trust funds in the Treasury of the United States, one to be known as the Arizona InterTribal Trust Fund and the other as the Navajo Trust Fund. Monetary proceeds resulting from the sale of the Phoenix Indian High School property are to be paid into these funds. Ninety-five percent of such proceeds are to be deposited into the Arizona InterTribal Trust Fund, and five percent of such proceeds are to be deposited in the Navajo Trust Fund.

Payment into the trust funds

Upon the closing of the Indian School land exchange, the purchaser must pay $34.9 million in the United States. At the discretion of the Secretary, in consultation with the InterTribal Council of Arizona and the Navajo tribe, the payment may be made in either a lump-sum payment or in thirty annual payments.

If the payment is made in annual payments, the purchaser is required to make annual payments each consisting of the interest due on the trust fund principal. The principal is due on the date of the final annual payment.

If the Secretary directs the purchaser to make a lump-sum payment, then the entire amount is due to the United States at closing. The Secretary of the Treasury is directed to invest the funds in interest-bearing deposits and securities.

Use of trust fund income

The Phoenix Indian High School has served as an educational resource and option of many Indian tribes and families. The legislation affirms that it is the responsibility of the Secretary to ensure that the funds generated will ensure that the formal education needs previously met by the school will now be met, at a quantitative, and qualitative level no less than that provided through the school, by on-reservation educational resources and facilities, either Bureau of Indian Affairs, tribal, or public.

LEGISLATIVE HISTORY

The House of Representatives passed H.R. 4519 on July 27, 1988 by a vote of 281–125. Senators McCain and DeConcini introduced a Senate companion measure, S. 2420, on May 20, 1988. A joint hearing on this measure was held by the Select Committee on Indian Affairs and the Subcommittee on Public Lands, National Parks and Forests on July 25, 1988.

At the business meeting on Thursday, September 15, 1988, the Senate Committee on Energy and Natural Resources ordered H.R. 4519, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, September 15, 1988, by a majority vote of a quorum present, recommends that the Senate pass H.R. 4519 if amended, as described herein.

The rollcall vote on reporting the measure was 14 yeas, 3 nays, as follows:

YEAS	NAYS
Mr. Johnston	Mr. Bradley*
Mr. Bumpers	Mr. Wirth
Mr. Ford*	Mr. Conrad
Mr. Melcher	
Mr. Bingaman*	
Mr. Fowler	
Mr. McClure	
Mr. Hatfield	

Mr. Weicker*
Mr. Domenici
Mr. Wallop
Mr. Nickles*
Mr. Hecht
Mr. Evans

* Indicates voted by proxy.

COMMITTEE AMENDMENTS

During the consideration of H.R. 4519, the Committee adopted a series of technical and conforming amendment but made only one substantive change to the House-passed bill.

The Committee adopted an amendment to keep the Indian School open until the end of the 1991 school year. As passed the House, the legislation would have provided for the school's closure at the end of the 1988 school year. This change is consistent with the action taken by the Senate Committee on Indian Affairs on September 14 in reporting S. 2420.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the *Congressional Record* for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 4519. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 4519, as reported.

EXECUTIVE COMMUNICATIONS

On July 14, 1988, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 2420. These reports had not been received at the time the report on H.R. 4519 was filed. When the reports become available, the Chairman will request that they be printed in the *Congressional Record* for the advice of the Senate. The testimony provided by the appropriate agency at the Subcommittee hearing follows:

STATEMENT OF SUSAN RECCE, ACTING ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I am Susan Recce, Acting Assistant Secretary for Fish and Wildlife and Parks of the Department of the Interior.

With me is Pat Ragsdale, Deputy Assistant Secretary for Indian Affairs. We are accompanied by William Hartwig, Chief of Realty of the Fish and Wildlife Service and Willis Kriz, Chief of the Land Resources Division of the National Park Service. We are pleased to be here today to provide the Administration's views on S. 2420, the Arizona-Florida Land Exchange Act.

We strongly support S. 2420, if amended as discussed below.

S. 2420 would ratify a land exchange agreement recently negotiated by the Department, insofar as the terms of the land transactions are concerned.

We believe this agreement represents a major accomplishment in both protecting the public interest in the Phoenix Indian School lands and acquiring the Florida lands authorized by Public Law 100-301 without direct expenditure of Federal funds.

The majority of the land exchanges conducted by the Fish and Wildlife Service or the National Park Service are done within existing authorities. This exchange, however, involving lands not under the jurisdiction of either agency, complex circumstances and conditions, and significant resource and dollar values, requires specific legislative authorization.

The Administration does strongly object to earmarking the $34.9 million to be received from Collier to equalize the values of the exchange into a trust fund for members of the Arizona Indian community, as proposed by this legislation. We believe the needs of the Arizona Indian community have already been met in large part by the expenditure of over $40 million in Federal funds to construct new on-reservation high schools in Arizona to replace the Phoenix Indian School. Any additional needs should be met through the formal appropriations process. This would allow those needs to be evaluated against all other demands for Federal funds, including the educational needs of other Indian tribes, and ensure the best use of scarce resources in the current budgetary situation.

This exchange proposal came about due to the interaction of three totally unrelated situations—the decision to close the Phoenix Indian School, the decision to complete the long-delayed conversion of Alligator Alley in Florida into Interstate Highway 75, and the growing recognition of the need to increase environmental protection of wetlands in South Florida.

Mr. Ragsdale will explain the events that led to the decision to close the Indian school, and I will then discuss the exchange itself.

In the early 1980's, there was an increasing recognition among Federal and State agencies and members of the public of the need for increased protection for the Everglades ecosystem. The Fish and Wildlife Service was in the process of conducting an Environmental Assessment for acquisition of land in Collier County for benefit of the endangered Florida panther, and the State, under the leadership of then-Governor Graham, was preparing for a major acquisition and restoration initiative known as "Save Our Everglades".

The planned conversion of Alligator Alley into the remaining link of Interstate 75 was the element that brought this specific acquisition proposal to the fore. As you will note from the map, a large tract of land immediate north and east of the existing boundary of the Big Cypress National Preserve is bounded on almost all

four sides by the Preserve and the two Indian Reservations. Legal access to most of the land is obtainable only from the highway.

Whenever new highway construction blocks access to adjoining lands, the owners must receive compensation for the loss of access, termed "severance damages". Interstate highways are built as "limited access" roads, which permit access to adjoining lands only from interchanges (or via locked-gate exists for special circumstances). This particular road was designed with no interchanges serving this tract of land, and for a variety of reasons it was not considered possible to redesign it to provide access. Because of the unusual circumstances here (i.e. no other access), it became apparent almost immediately that the severance damages would constitute a significant percentage of the land's total value. In fact, the State of Florida quickly determined that the damages would probably amount to half the value of the entire tract of land.

If nothing was done, the Highway Trust Fund and the State would be paying for half of the value of the land, while receiving nothing in return. And given the government's usual experience with land acquisition, any efforts to acquire the land at a later date would result in the courts compensating the owners at the then-current fair market value rate—without reference to the previous severance payments.

Governor Graham then asked that the entire tract be acquired for addition to the Big Cypress National Preserve in conjunction with the highway severance process, with the State paying 20 percent of the cost of the remaining value in the land, and the Department 80 percent. This would result in acquisition at present fair market value. The other options were that either the government could pay 50 percent of the value of the land and receive nothing, and not pursue its later acquisition, which could cause significant environmental problems, as explained later in my statement, or pursue acquisition independently of the severance process.

Governor Graham set about securing support for his proposal, which included meetings with Departmental officials. We very quickly became concerned over the budgetary implications, which could have exceeded $60,000,000 in appropriated funds for our share of the purchase, and frankly did not believe we would be able to support the proposal. However, considerable time passed before legislation authorizing the purchase was introduced in Congress. Before it was scheduled to be acted upon, we were contacted by the Aerojet-General Corporation and Members of Congress from Florida about an interstate land exchange by that company.

It occurred to a number of persons that an exchange might be a means of resolving the budgetary problems associated with the Big Cypress proposal, and we began discussions with the principal landowners, the Barron Collier Corporation and Collier Enterprises. We reached agreement in principle with them in the Spring of 1986, but resolution of final details, particularly with respect to what would happen in Phoenix, was not reached until earlier this year.

Under the terms of our agreement with the Collier interests, four parcels of private land in Collier County, Florida, totaling approximately 107,800 acres, would be acquired by the United States for addition to the National Park System and the National Wildlife Refuge System, providing benefits for endangered species, other

wildlife, wetlands, groundwater, drinking water supplies, and recreation.

Of the lands to be received by the United States, approximately 83,070 acres, in two parcels, would be added to the existing Big Cypress National Preserve. Approximately 5,110 acres would become part of and complete the Florida Panther National Wildlife Refuge, which has been established for the protection of the endangered Florida panther. The latter Refuge would total approximately 29,410 acres; the remaining 24,298 acres are being purchased with appropriated land acquisition funds. Approximately 15,384 acres of land area would become a new Ten Thousand Islands National Wildlife Refuge; in addition Collier, at no cost to the government, would quitclaim title to the United States to approximately 4,236 acres of land below mean high water in the Ten Thousand Islands area. These lands may be subject to an ownership claim by the State of Florida. If so, the U.S. Fish and Wildlife Service will seek a Memorandum of Agreement with Florida to ensure a conservation management regime for these lands.

Subsurface oil and gas rights underlying those same lands would be retained by Collier, pursuant to existing law governing the Big Cypress National Preseve, and its 1988 amendment, Public Law 100–301, or the laws relating to the management of the refuges, as appropriate, and subject to mutually agreed-upon, binding stipulations controlling the exploration and development of these resources. These stipulations provide essential protection for water, lands, and wildlife, including endangered species, during any exploration- or development-related activities. The stipulations are designed to protect the surface uses of the land for Preserve and refuge purposes, while recognizing the reserved property rights of the Colliers. In addition, pursuant to a provision of Public Law 100–310, the National Park Service is preparing oil and gas regulations which would supersede the agreement's stipulations as they pertain to the Big Cypress National Preserve.

In addition to the lands conveyed to the United States, Collier would make a cash equalization payment of approximately $34.9 million to the United States, representing the difference in negotiated price between the lands to be conveyed to the United States and the land to be conveyed to Collier by the United States.

In exchange for the above, Collier would receive title to approximately 68.4 acres of land in Phoenix, Arizona, which is part of an approximately 111-acre parcel owned by the United States and currently occupied by the Phoenix Indian School. The land in Phoenix, Arizona, that would be conveyed to Collier is surplus to the program needs of the United States. As directed by Congress, the Department has studied and determined that the Phoenix Indian School is no longer required for Indian education. Congressional authorization for closing of the school would necessarily be required in connection with ratification of the agreement.

The school is administered by the Bureau of Indian Affairs for the benefit of Indian education. Of the remaining acreage in that parcel, 6.56 acres are subject to road rights-of-way, the underlying estate to which would be transferred to the city, 20 acres would be transferred to the City of Phoenix for use as a public park, 11.5 acres would be transferred to the Veterans Administration, allow-

ing it to expand facilities of its adjacent hospital, and 4.5 acres would be transferred to the State of Arizona for construction of a State veterans home.

The Phoenix Indian School site is no longer needed to meet the educational needs of Arizona Indians due to completion of new, more modern facilities elsewhere in the region. The area around the present school is now used primarily for commercial purposes, including offices, service industries, retail businesses, hotels, and other related uses. The school site's primary value to the United States is as an asset of significant value that could be disposed for valuable consideration.

The agreement is in the form of an offer to Collier to undertake the exchange. Collier will have three years after the enactment of the legislation to decide whether to accept the offer. This time will be utilized by Collier and the city of Phoenix to develop zoning and land use plans for the Phoenix Indian School site.

Immediately following enactment, and during the planning period, Collier will commit the land in Florida to a conservation management regime. In essence, nearly 108,000 acres will immediately become a *de facto* part of the National Park and National Wildlife Refuge Systems.

By authorizing the exchange agreement at this time, the Congress can provide that valuable lands in south Florida can be acquired in an economical manner, without appropriated funds, and be managed for the protection of valuable watersheds and wildlife habitat. Stipulations and regulations to ensure the protection of environmental values are incorporated as part of the contractual agreement and would apply to the exploration and development of oil and gas resources underlying the lands in Florida to be conveyed to the United States. These controls on oil and gas activities generally mirror the protections provided now in the Big Cypress Preserve and in the units of the National Wildlife Refuge System.

The lands to be exchanged, with the addition of the cash equalization payment, are approximately equal in value. The 111 acres of the Phoenix Indian School land have been appraised at $122.2 million. Through deletion of the lands for the City the State, and the Veterans Administration, the lands to be conv yed to Collier are valued at approximately $80 million. The negot ated value of the combined Florida lands to be conveyed to the U iited States is approximately $45.1 million (See Table 1). The diffe.rence between the values of the Phoenix and Florida lands would be balanced by a cash equalization payment of approximately $34.9 million, to be paid by Collier to the United States.

The State of Florida is also committed to the Big Cypress project and has set aside funds for sharing some of the costs of Federal acquisition, based upon its original proposal for purchase of the areas to be added to the Big Cypress National Preserve. We will propose to the State that it fulfill its obligations by acquiring (or making the funds available to acquire) the remaning approximately $15.4 million worth of lands in the eastern townships of the Big Cypress National Preserve and donating these lands to the Department.

There are substantial public benefits accruing from the exchange. The land exchange would permit the National Park Service to acquire two parcels of land, totaling approximately 83,100

acres, including approximately 70,000 acres to the northeast ("the eastern townships") and approximately 13,100 acres to the west ("the western strip") of the existing Big Cypress National Preserve. These parcels comprise a majority of the lands designated for acquisition under Public Law 100-301, establishing the Big Cypress National Preserve Addition. Preservation of the eastern township lands is considered essential to the protection of the fragile hydrology of south Florida, including the source of drinking water for millions of residents in Dade and Broward Counties, and areas of the western strip serve as habitat for the endangered Florida panther and other threatened and endangered species.

The original acquisition of the Big Cypress National Preserve was largely for the purpose of protecting essential watersheds that supply Everglades National Park and drinking water for southern Florida. Continued conversion of wetlands to agricultural uses, subdivision activity and other development processes severely threaten these watersheds. Acquisition of the additional lands for the Preserve would help ensure the protection of these watersheds and the preservation of the habitats that provide for continued hunting, fishing and other recreational activities. Finally, problems of trespass and illegal off-road vehicle use from the western addition strip to the Preserve could be controlled by this acquisition.

Approximately 5,110 acres of the Florida land to be acquired would be added to and complete the Florida Panther National Wildlife Refuge. Much of this Refuge is already being purchased by the U.S. Fish and Wildlife Service for the benefit of the endangered Florida panther. This Refuge contains important habitat for the panther, as well as a number of other threatened and endangered species of plants and animals. As in the Preserve addition, habitat loss and other problems resulting from agricultural and development activities would be prevented by the acquisition, resulting in significant improvements in the future prospects of these species.

Another National Wildlife Refuge, totaling approximately 20,000 acres would be established in the Ten Thousand Islands area, immediately northwest of the Everglades National Park, comprised of about 15,384 acres of islands and shore, and another 4,236 acres of lands below mean high water, to be deeded from the Colliers. This area serves as a productive habitat for a wide variety of fish and wildlife species, including the endangered Florida manatee and the bald eagle, and includes large undisturbed areas of cypress and mangrove. The Ten Thousand Islands is an outstanding scenic area with extensive estuarine spaces interspersed with a great many small islands and peninsulas. It is an essential nursery area for many species of fish and shrimp that provide the basis for a major element of Florida's fishery industry, and also provides a unique and irreplaceable recreational area for boaters and campers. Development has extended southward along the Florida Gulf coast to Marco Island, which is just northwest of this area, and would very likely extend further, resulting in loss of the unique values of this area, if acquisition by the government did not occur.

We note that certain of the buildings and structures on the Phoenix Indian School land have been determined eligible for the National Register of Historic Places, although none have actually been nominated. A Memorandum of Agreement has been complet-

ed with the Advisory Council on Historic Preservation and the Arizona Historic Preservation officer that provides for appropriate studies and recordation of these sites, in order to protect the public's interest in their historic value. This approach will satisfy all of the Department's statutory obligations regarding the historic features of the property.

The land in Collier County, Florida that Collier would convey to the United States is protected under the exchange agreement in several ways pending the actual conveyance. Collier agrees not to materially change the management of its lands, or to substantially alter their physical condition.

Collier agrees to interim use and occupancy of its lands by Departmental employees for conservation purposes, including studies of fish and wildlife and other environmental resources.

In addition, Collier will at its expense, prior to conveying the land to the United States, terminate all farming, grazing, hunting and other recreational leases and uses on the land, demolish all habitable structures associated with such uses, and remove all known trespassers.

An Environmental Assessment has been prepared concerning this exchange, and a copy provided to the Committee. Each of these acquisitions has been subject to more detailed prior review, including extensive public review, under the National Environmental Policy Act, in one or more Environmental Assessments or Environmental Impact Statements for each parcel to be acquired, as well as other related environmental review documents, and previous Congressional hearings. These prior reviews are summarized and identified in the Environmental Assessment for the current proposal. The disposition of the Phoenix Indian School land has been the subject of considerable public review, and the uses to which it would be put by Collier following the exchange will be subject to further public review under the land use planning procedures of the City of Phoenix. Finally, Congress must authorize this agreement for it to become effective.

Some have questioned the land values involved in the exchange. All of the Florida lands except the northern addition to the Big Cypress National Preserve were appraised according to the standard practices of the National Park Service and the Fish and Wildlife Service. A General Accounting Office review had no criticisms of these appraisals. They were also appraised by certified appraisers retained by the Collier interests, and the values were then negotiated. As shown on the chart attached to my testimony, the agreed-upon figures are six percent higher than our appraisals and twenty-one percent lower than the appraisals conducted for the Collier interests.

Portions of the lands to be acquired for the Ten Thousand Islands Refuge (4,236 of 19,620 acres) are below the mean high tide level and may be subject to a claim by the State of Florida. Contrary to press reports, this does not represent "most" of the Refuge, any possible loss to the government, nor is it any surprise to or by any of the parties to the proposal. We recognized this possibility from the outset, and explained the situation in a House hearing last summer.

These lands were given *absolutely no value* in our appraisals. They will be transferred to the United States by quitclaim deed for $2 ($1 to each company). This removes Collier's claim to the land (on which they have been paying taxes for many years). If any claim is made by the State, we will work with them, through cooperative agreement or otherwise, to ensure a conservation management regime for the area. The State is also aware of the situation, and has supported the exchange proposal. We do not anticipate any problems in this regard, and the General Accounting Office had no criticism of our appraisal of this tract.

The northern addition to the Preserve was not subject to appraisal by the National Park Service because its value was already slated to be determined by the condemnation process associated with the conversion of Alligator Alley into Interstate 75, and we saw no reason not to utilize that determination. The Department instead negotiated a maximum dollar value for this tract, to remain valid if the condemnation process yielded a higher amount, and the United States to receive additional land if the value was lower. The negotiated value was $26.6 million, and the value determined by the highway condemnation process was $27,898,100, representing a gain to the United States of $1,298,100. The condemnation value was approved by the State of Florida, the Federal Highway Administration, and the court. We view that as a clear determination of fair market value, and criticism of that value as pointless, given the final nature of the determination.

We accordingly believe the dollar values for these lands are excellent, and their wildlife values are unchallenged. Their acquisition at this price is clearly in the public interest.

There have been press reports containing anonymous suggestions that the lands are "worthless", and cannot be developed because they are "swampland". It is precisely their wetland nature that makes them valuable fish and wildlife habitat, and home for several endangered species. It is true that the Corps of Engineers section 404 permitting process might protect much of this land from shopping centers and highrises. However, there is ample and unquestionable evidence that existing laws do not protect most of these lands from conversion to agricultural purposes, or from construction of individual dwellings.

As is clearly discussed in our environmental assessments, runoff of pesticides, fertilizers and other agricultural chemicals, and unregulated human intrusions, represent very real, major threats to several of the endangered species and the water quality values we are seeking to protect by the proposal. The need for protection of the water quality and the resident endangered species are expressly recognized in the recently enacted Public Law 100-301 (S. 90), which authorized purchase of much of this area.

Some have also questioned the value attached to the Phoenix lands, suggesting that either the figure is too low, or that it should not even be calculated until after the City of Phoenix has rezoned the property.

The Phoenix tract has been the subject of two appraisals by the Department, conducted in the normal fashion by skilled professionals, and we strongly believe the one we approved represents accu-

rate value for the land. There is no reason to believe another appraisal would yield a significantly different result.

The suggestions that the Federal government await decisions by the City of Phoenix for zoning of the property are completely unrealistic. The city would prefer that the land be utilized for park purposes, and city officials have made it very clear that the land is not going to be rezoned for development in a vacuum. This proposal provides for the Colliers to work with the city, in a process they have already mutually agreed upon, for a development and zoning package that meets the city's concerns. Absent such specific input, the city will simply not act to rezone the land.

We believe we have addressed the concern that the zoning decisions might significantly increase the value of the Phoenix land by the provisions in the contract which allow any interested party that has sufficient financial resources, and agrees to abide by the city's zoning decision, to make a higher offer for the land once the zoning is completed. Collier may then either match this offer or withdraw, in which case the Phoenix land would be sold to the higher bidder. A portion of the funds would be utilized to purchase the Collier lands covered by the exchange proposal at the currently-agreed price. We are putting the land to the only reliable test of value—the marketplace; the government will receive a fair price for the land regardless of the outcome.

We must also keep in mind that any effort by the government to pressure or outwait the city on that issue would lose the environmental and outlay benefits of the exchange proposal. We would be faced instead with pressures for massive outlays of appropriated funds to purchase the Florida lands. Budgetary realities would result in our attempting to acquire these lands over a considerable period of time, with only a few million dollars likely to be made available through the appropriations process each year. In the face of rapidly rising land values in South Florida, this would result in large additional expenditures of scarce taxpayer dollars. It would also be questionable as to whether the lands would remain available in a desirable condition for any length of time, or whether they would instead be converted to agricultural purposes or subdivided, with major adverse environmental consequences.

Such an approach would transform the current "win-win" proposal into a losing proposition for all parties.

We commend the Committee's willingness to act so rapidly on the implementating legislation, and we urge enactment with the amendment we have suggested.

This concludes my prepared statement. I would be happy to answer any questions you may have.

TABLE I.—APPRAISED VALUES OF FLORIDA LANDS INCLUDED IN COLLIER/DEPARTMENT OF THE INTERIOR LAND EXCHANGE

	Acres	Appraised value [1]		Negotiated value [1]	Appraisal	
		Collier	DOI		Percent under Collier	Percent over DOI
Florida Panther NWR	5,110	$3.97	$1.76	$2.1	(47.11)	19.63
Big Cypress Preserve (East townships)	70,010	[2] 26.6	[2] 26.6	[3] 26.6	([4])	([4])
Big Cypress Preserve (Route 29)	13,060	13.2	8.125	10.6	(19.70)	30.46
Ten Thousand Islands	19,620	12.4	[5] 4.5	5.8	(53.23)	28.89
Total	107,800	56.2	42.28	$45.1	(20.91)	6.25

[1] All values are expressed in millions of dollars.
[2] Agreed-to values prior to Federal Highway Administration/Florida DOT condemnation proceedings for severance damages from I–75 construction.
[3] Actual values stipulated in subsequent condemnation proceedings were:
Total value, $56,484,600; Severance damages, $28,586,500; and Remainder value, $27,898,100.
"Severance damages" = loss of value from lack of access to the land after construction of the highway, as determined in court by condemnation action.
"Remainder value" = value of the land after loss of access (severance) is determined; DOI is acquiring the remainder value of these lands.
[4] The value of the land to be acquired is $1,298,100 (5%) more than the negotiated value, with the benefit being to the United States.
[5] Includes 4,236 acres below mean high tide line, disputed between Collier and the State of Florida, given no value by DOI; to be transferred to the United States by quitclaim deed.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act H.R. 4519, as reported.

○

Calendar No. 984

100TH CONGRESS
2d Session

SENATE

REPORT
100-543

URANIUM MILL TAILINGS REMEDIAL ACTION AMENDMENTS ACT OF 1988

SEPTEMBER 23 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1991]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1991) Uranium Mill Tailings Remedial Action Amendments Act of 1987, having considered the same, reports favorably thereon with amendments and an amendment to the title and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 1, line 4, strike "1987" and insert "1988" in lieu thereof.
2. On page 2, line 2, strike "Lands" and insert "Land" in lieu thereof.
3. On page 2, line 5, insert "Mesa," after "(B)".
4. Amend the title so as to read: "A bill Uranium Mill Tailings Remedial Action Amendments Act of 1988.".

PURPOSE OF THE MEASURE

The purpose of S. 1991 is to authorize the Secretary of the Interior to transfer lands under the jurisdiction of the Bureau of Land Management to the Department of Energy for permanent surveillance and maintenance of remediated mill tailings as required by the Uranium Mill Tailings Radiation Control Act of 1978 (P.L. 95-604). S. 1991 also extends the authority of the Secretary of Energy to perform remedial action at designated uranium mill tailings sites and vicinity properties until September 30, 1994, except that the authority to perform groundwater restoration activities is extended without limitation.

S313-71

Background and Need

Mill tailings are the waste that results from the extraction of uranium from uranium ore. The tailings dry into a slightly radioactive sand-like material and represent more than 98 percent of the ore that enters the mill.

Mill tailings present a potential long-term health hazard principally because they emit small amounts of radon. Radon is a colorless, inert, radioactive gas formed by the radioactive decay of radium, an element found with the uranium in the ore. Radon, with a half-life of four days, decays to form products that are also radioactive. Although radon is found in many rocks and minerals, it is more readily released from uranium mill tailings because they have been finely crushed, and tend to contain high concentrations of radium. The tailings piles may also contain other radioactive and nonradioactive contaminants.

Remedial action is necessary to limit human exposure to radiation and other contaminants associated with tailings. The level of human exposure to radon and other radioactive substances in the tailings piles is quite low. Nevertheless, there is concern that even low levels of radiation may pose health hazards to those who might be exposed over long periods of time. There is also concern that future generations may misuse the tailings for construction materials or for other purposes.

Remedial actions are designed to reduce direct human exposure to radon and other contaminants, to prevent radioactive and nonradioactive contamination of ground water, and to assure that the tailings are effectively isolated from the environment for hundreds of years. Remedial action also prevents the tailings from being removed from the sites and used in construction material.

Little was done to treat mill tailings piles to protect the public or the environment until recently because not much was known about the potential long-term health hazards of the radioactive elements in the tailings. As a result, over 25 million tons of tailings were left untreated and exposed to the environment at numerous mill tailings sites.

The tailings piles first received attention in the early 1970's in Grand Junction, Colorado. Uranium mill tailings had been used as construction material at approximately 5,000 locations and the occupants of these dwellings are being exposed to low-level radiation and elevated radon concentrations. Concern over this exposure led Congress, in 1972, to authorize funding to assist the State of Colorado in conducting a remedial action program in Grand Junction.

In 1978, after a determination that uranium mill tailings may pose a radiation health hazard, Congress passed the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (P.L. 95–604). UMTRCA authorizes the Secretary of Energy to provide for the stabilization, disposal, and control of uranium mill tailings and other residual radioactive material located at designated inactive uranium mill sites in a safe and environmentally sound manner. UMTRCA also provides for the removal of tailings from vicinity properties close to the mill sites. In many of these vicinity properties, the uranium mill tailings were used as construction or fill material.

UMTRCA requires that remedial action be carried out with the full participation of the States and Indian tribes on whose land the tailings are located. The states are required to pay 10 percent of the cost of remedial action, while the Federal government pays the full cost for remedial action on Indian lands.

UMTRCA also requires the Environmental Protection Agency (EPA) to establish standards and requires the Nuclear Regulatory Commission (NRC) to consult in the designation of sites and determination of site boundaries, as well as to provide concurrence in the selection and performance of the remedial action for each site. Upon completion of the remedial action, the NRC issues a license for the maintenance of the disposal sites.

The UMTRCA program includes 24 processing sites in 10 states. In addition, over 8,000 vicinity properties are being investigated and remedial action may be required at 5,000 to 6,000 of these properties. For the purpose of UMTRCA, the processing sites included in the remedial action program are those which had tailings piles accumulate prior to 1971, and where the operator no longer held a valid operating license for the production of any uranium or thorium products derived from ore as of January 1, 1978.

Under UMTRCA, the Secretary of Energy is authorized to perform remedial action for seven (7) years after the EPA has promulgated remedial action standards unless that termination date is extended by a subsequent statute. Since the EPA standards became effective on March 7, 1983, the current authority for the Department of Energy (DOE) to perform remedial action will expire on March 6, 1990. The Department of Energy believes that an extension of the authority for the UMTRCA project until the end of fiscal year 1994 is necessary in order to complete the remaining remedial action work.

The extension of UMTRCA authorization is required for a variety of reasons. First, the EPA standards are more stringent than DOE expected, and the project is also more complex to administer than expected. The Department is currently facing technical and administrative constraints they believe make it impossible to complete the required certification of remedial work and site licensing by the Nuclear Regulatory Commission before the current authorization expires in 1990. Second, recent budget constraints made it impractical for the Department to seek or obtain the large annual appropriations required to complete the remedial action work within the original authorization period. As a result, annual appropriations have been lower than what would have been required to finish the project by 1990. Finally, the states involved require more time to appropriate their 10-percent cost share for the remedial action projects.

The Department believes that if this extension is not granted, four sites under construction would not be completed, nine sites would have no construction performed, and over 1,100 vicinity properties would not be remediated. If the Department fails to finish the required remedial action work, they could not provide the economic, environmental, and health and safety benefits promised to the states and local communities when the legislation was enacted. In addition, the Department of Energy would be facing responsibilities and liabilities associated with the incomplete work,

and the liabilities associated with its responsibilities for long-term surveillance and maintenance of these sites. Finally, regulatory problems would result because the sites would not be in compliance with EPA and NRC standards.

The Department of Energy has also requested an unlimited extension of the Secretary's authority to perform groundwater restoration activities beyond 1994. EPA is currently issuing new groundwater standards in response to a September 3, 1985 decision by the 10th Circuit Court of Appeals in which the groundwater provisions of the EPA uranium mill tailings cleanup standards (40 C.F.R. 192.20(a) (2-3)) were set aside and remanded to EPA. The new standards are not expected to be made final before March, 1989.

Based on the draft EPA standards, the Department of Energy believes that groundwater restoration activities will take significantly more time that originally planned to perform, possibly decades. There will be additional costs associated with the groundwater restoration, but any estimates of these costs prior to the promulgation of the final standards would be speculative. Hence, given the uncertainties surrounding the groundwater restoration problem, it does not seem prudent to restrict the Secretary's authority to conduct groundwater restoration activities.

Under UMTRCA, the Department of Energy is also responsible for the permanent surveillance and maintenance of remediated processing sites. In order to accomplish this, certain lands in the vicinity of processing sites that are currently under the jurisdiction of the Bureau of Land Management (BLM) must be permanently transferred to the Department of Energy. Congressional approval is required for BLM land withdrawals of greater than 20 years. Any permanent withdrawal of BLM lands must be undertaken in accordance with the requirements of the National Environmental Policy Act (42 U.S.C. 4341). If the authority for these land withdrawals is not granted, the Department of Energy must alter certain planned activities and cancel other ongoing activities. For example, the high priority work at the Grand Junction site in Colorado can not proceed without the withdrawal of BLM lands.

Legislative History

S. 1991 was introduced on December 21, 1987 by Senators Wirth, Armstrong, Johnston, Domenici, Wallop and Bingaman at the request of the Administration. The bill was referred to the Subcommittee on Energy Research and Development. No hearings were held.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and National Resources met in open business session on September 15, 1988 to consider S. 1991. By a majority vote of a quorum present, the Committee recommends that the Senate pass S. 1991, if amended as described herein.

The rollcall vote on reporting the measure was 17 yeas, 0 nays as follows:

YEAS	NAYS
Mr. Johnston	

Mr. Bumpers
Mr. Ford *
Mr. Melcher
Mr. Bradley *
Mr. Bingaman *
Mr. Wirth
Mr. Fowler
Mr. Conrad
Mr. McClure
Mr. Hatfield
Mr. Weicker *
Mr. Domenici
Mr. Wallop
Mr. Murkowski *
Mr. Nickles *
Mr. Hecht

* Indicates vote by proxy.

Committee Amendments

The Committee amendments, generally technical in nature, accomplish the following things. First, they bring the bill up-to-date by changing the title and purpose of the legislation to 1988. The amendments also add Mesa County, Colorado to the list of counties in various states in which the Secretary of the Interior is authorized to permanently withdraw lands now under the jurisdiction of the Bureau of Land Management (BLM). The omission of Mesa County from the original list was inadvertent.

Section-By-Section Analysis

Section 1 amends Section 106 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7916) to authorize the Secretary of the Interior to transfer permanently to the Secretary of Energy certain lands that are currently under the jurisdiction of the Bureau of Land Management. The counties in which the Secretary of the Interior is authorized to withdraw lands are delineated in this section. In addition, other requirements that must be satisfied before any permanent transfer of lands can occur are also delineated in this section. They include compliance with the National Environmental Policy Act, consultation with the Governor of the affected state, and consultation with the chief administrator of any Federal agency which may control some of these lands.

Section 2 amends Section 112(a) of UMTRCA (42 U.S.C. 7922(a)) to extend the authority of the Secretary of Energy to perform remedial action until 1994, except that the authority of the Secretary to perform groundwater restoration is extended without limitation.

Cost and Budgetary Considerations

The following cost estimate of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 19, 1988.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1991, the Uranium Mill Tailings Remedial Action Amendments of 1987, as ordered reported by the Senate Committee on Energy and Natural Resources, September 15, 1988. CBO estimates that enacting S. 1991 would cost approximately $300 million over the 1990–1994 period for remedial action at uranium mill tailings sites, assuming appropriation of the necessary sums.

S. 1991 would streamline certain administrative procedures for transferring urnaium mill tailings sites from the Department of the Interior to the Department of Energy (DOE). The bill would also extend the authority of the Secretary of Energy to perform remedial action at uranium mill tailings sites until September 30, 1994. Under current law, this authority would expire on March 31, 1990.

The DOE currently spends about $110 million per year on remedial action activities. Based on information provided by DOE, funding for remedial action under S. 1991 would decline significantly in fiscal years 1992 and 1993, and fall to near zero for fiscal year 1994. Additional funding requirements beyond March 1990 would total about $300 million.

We estimate that enacting S. 1991 would result in no significant cost to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Peter Fontaine, who can be reached at 226–2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1991 as reported.

The bill is not a regulatory measure in the sense of imposing Government established standards or significant ecomomic reponsibilities on private individuals or businesses. S. 1991 contains an extension of DOE's current authority to perform remedial action activities.

In addition, Section 1 of S. 1991 authorizes the Secretary of the Interior to transfer permanently certain lands in the vicinity of mill processing sites, which are currently under the jurisdiction of the Bureau of Land Management, to the Secretary of Energy for permanent site surveillance and maintenance. This permanent transfer represents a streamlining of current administrative procedures. Thus, little if any additional paperwork would result from the enactment of S. 1991.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

EXECUTIVE COMMUNICATIONS

The November 20, 1987 letter and attachments from the Department of Energy to the President of the Senate transmitting the proposed legislation are reprinted below:

DEPARTMENT OF ENERGY,
Washington, DC, November 20, 1987.

Hon. GEORGE BUSH,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is proposed legislation to amend Public Law 95-604, the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. § 7901, et seq.) (the Act), to extend the authority to expend funds under the Act from March 6, 1990, until September 30, 1994. This proposal also includes an amendment to the Act that would allow the Department of the Interior (DOI) to transfer public lands under its jurisdiction to the Department of Energy for permanent surveillance and maintenance of the remediated mill tailings on these lands.

PURPOSE OF THE LEGISLATION

This legislation will extend the authorization period of the Uranium Mill Tailings Remedial Action Project (UMTRAP). Under section 112(a) of the Act, the Secretary of Energy's authority to perform remedial action terminates 7 years after the Environmental Protection Agency (EPA) promulgated remedial action standards unless that termination date is specifically extended by a subsequent statute. EPA's standards became effective on March 7, 1983. Consequently, absent a specific statutory extension of the authorization period, the Secretary's authority to conduct remedial action under the Act will expire on March 6, 1990.

An extension of the project until the end of fiscal year 1994 is needed because current budget constraints will make it impractical to seek or obtain the large annual appropriations required to complete remaining work within the 7 years of the program's authorization. In addition, technical and administrative constraints would make it impossible, even with totally unconstrained funding, to complete the required certification of remedial work and site licensing by the Nuclear Regulatory Commission. These activities must be completed before the Secretary's authority to conduct remedial action expires.

The extension will cause a small increase in the estimated cost due to inflation, but it also will produce a more efficiently balanced annual workload. Failure to extend the project will mean that all of the planned work would not be completed. The Department's recommendation to extend the duration of the project is consistent with a similar recommendation made by the House Appropriations Committee in the conference report (H. Rept. No. 99-195) accompanying Public Law 99-141, the Fiscal year 1986 Energy and Water Development Appropriations Act.

In addition, an extension of the Secretary's authority to perform groundwater restoration activities beyond 1994 is requested because EPA is expected to promulgate in 1988 new groundwater standards for the project. The standards are being issued in response to a September 3, 1985, decision by the 10th Circuit Court of Appeals in which the groundwater provisions of EPA's uranium mill tailings cleanup standards (40 C.F.R. 192.20(a)(2-3)) were set aside and remanded to EPA. It is expected that groundwater restoration activities may take several decades depending upon the final standards promulgated and restoration alternative selected. Consequently, due to the large schedule uncertainly, the proposed legislation does not limit the Secretary's ability to conduct groundwater restoration activities. There will be additional cost associated with these activities, but any estimate prior to EPA's final promulgation of new groundwater standards would be speculative. The legislation amending section 112 contemplates a two-phased remedial action project at sites where long term groundwater restoration will be required. The first phase would be completion of site stabilization prior to the 1994 end date. The second phase would cover longer term groundwater restoration. The NRC's concurrence and licensing functions also would need to occur in two phases in conjunction with the Secretary's two phase completion of remedial action, including groundwater restoration activities.

Finally, the proposed legislation would authorize the Secretary of the Interior (Interior) to transfer lands under the juridiction of the Bureau of Land Management (BLM) in the vicinity of inactive uranium processing sites at which the Secretary is undertaking remedial action, to the Department of Energy for permanent surveillance and maintenance. This proposal is necessary because land withdrawal applications for greater than 20 years require congressional approval. Any permanent withdrawal of BLM lands will be undertaken in accordance with the requirements of the National Environmental Policy Act. (42 U.S.C. § 4341). It is currently anticipated that any land withdrawn by Interior under this authority would be located within a 30 mile radius of the inactive uranium processing sites.

DESCRIPTION OF THE URANIUM MILL TAILINGS REMEDIAL ACTION PROJECT

The Uranium Mill Tailings Radiation Control Act of 1978 authorizes the Secretary of Energy, in cooperation with affected States, Indian Tribes, and site owners, to provide a program of assessment and remedial action at designated "processing sites". The purpose of the remedial action is to stablize and control the tailings and other residual radioactive materials located on the inactive uranium processing sites in a safe and environmentally sound manner and to minimize or eliminate potential health hazards. Properties in the vicinity of designated processing sites contaminated with material from the site and referred to as "vicinity properties" are also eligible for remedial action.

The Department is conducting remedial action at 24 designated inactive uranium processing sites and associated vicinity properties located in 10 States and the vicinity properties associated with the

inactive Edgemont, South Dakota uranium mill, currently owned by the Tennessee Valley Authority.

The 7-year UMTRAP authorization period needs to be extended as soon as possible in order to provide adequate lead time to properly plan this large and complex program and to extend existing remedial action contracts. Because any long-term extension of current contracts will probably need to be bid competitively, a process which takes at least 1 year, authorization of the program as soon as possible is needed to avoid interruption of the work. Also, unless the program is specifically extended by Congress, it will be necessary for the Department to begin planning to terminate authority to conduct remedial action.

COST AND BUDGET DATA

The President's fiscal year 1988 budget request assumes enactment of this legislation. A copy of the extended project schedule is enclosed. The proposed budget for the project for the next 7 fiscal years is summarized as follows:

Cost and budget data, fiscal years 1988–94

[In millions of dollars]	*Amount*
Fiscal year:	
1988	116.0
1989	116.0
1990	116.0
1991	116.0
1992	93.5
1993	8.5
1994	1.9

The Office of Management and Budget advises that enactment of this legislative proposal would be in accord with the President's program.

Sincerely,

ERIC, J. FYGI,
Acting General Counsel.

Enclosures:
1. Proposed Bill.
2. Extended Project Schedule.

A BILL To amend the Uranium Mill Tailings Radiation Control Act of 1978.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uranium Mill Tailings Remedial Action Amendments Act of 1987."

SEC. 2. Section 106 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. § 7916) ("UMTRCA") is amended by striking paragraph (2) and all that follows and inserting in their place:

"(2) the Secretary of the Interior may transfer permanently to the Secretary to carry out the purposes of this Act, public lands under the jurisdiction of the Bureau of Lands Management in the vicinity of processing sites in the following counties:

"(A) Apache County in the State of Arizona;

"(B) Gunnison, Moffat, Montrose, Garfield, and San Miguel Counties in the State of Colorado;

"(C) Boise County in the State of Idaho,

"(D) Billings and Bowman Counties in the State of North Dakota;

"(E) Grand and San Juan Counties in the State of Utah;

"(F) Converse and Fremont Counties in the State of Wyoming; and

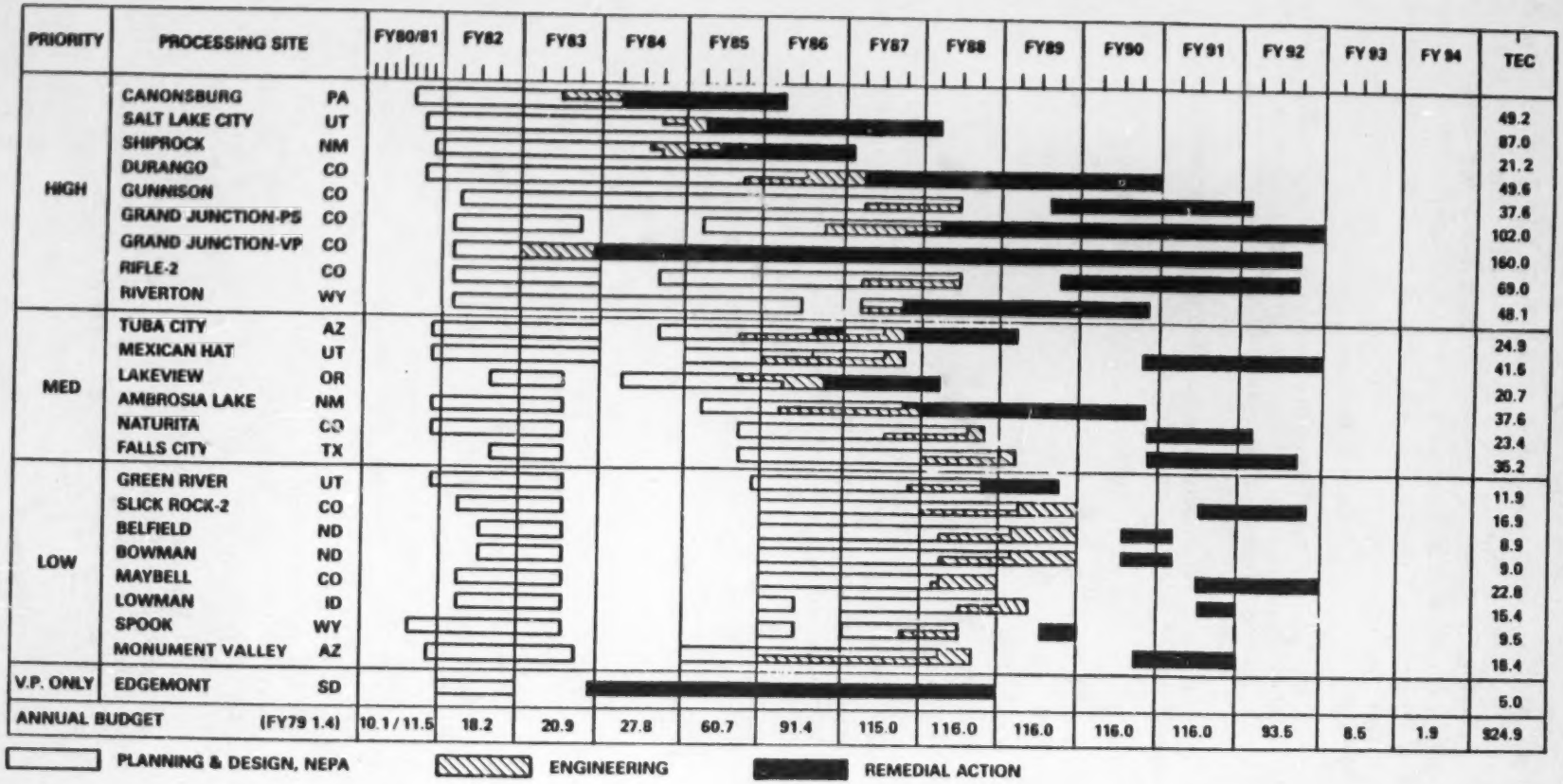
"(G) Any other County in the vicinity of a processing site, if no site in the County in which a processing site is located is suitable.

Any permanent transfer of lands under the jurisdiction of the Bureau of Land Management by the Secretary of the Interior to the Secretary shall not take place until the Secretary complies with the requirements of the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) with respect to the selection of a site for the permanent disposition and stabilization of residual radioactive materials. Section 204 of the Federal Land Policy and Management Act (43 U.S.C. § 1714) shall not apply to this transfer of jurisidiction. Prior to acquisition of land under paragraph (1) or (2) of this subsection in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this title or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this Act without the concurrence of the chief administrative officer of such agency.".

SEC. 3. Section 112(a) of UMTRCA (42 U.S.C. § 7922(a)) is amended to read as follows:

"(a) The authority of the Secretary to perform remedial action under this title shall terminate on September 30, 1994, except that the authority of the Secretary to perform groundwater restoration activities under this title is without limitation.".

UMTRA PROJECT SCHEDULE ($ IN MILLIONS)



PRIORITY	PROCESSING SITE		FY80/81	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92	FY93	FY94	TEC
HIGH	CANONSBURG	PA															49.2
	SALT LAKE CITY	UT															87.0
	SHIPROCK	NM															21.2
	DURANGO	CO															49.6
	GUNNISON	CO															37.6
	GRAND JUNCTION-PS	CO															102.0
	GRAND JUNCTION-VP	CO															160.0
	RIFLE-2	CO															69.0
	RIVERTON	WY															48.1
MED	TUBA CITY	AZ															24.9
	MEXICAN HAT	UT															41.6
	LAKEVIEW	OR															20.7
	AMBROSIA LAKE	NM															37.6
	NATURITA	CO															23.4
	FALLS CITY	TX															35.2
LOW	GREEN RIVER	UT															11.9
	SLICK ROCK-2	CO															16.9
	BELFIELD	ND															8.9
	BOWMAN	ND															9.0
	MAYBELL	CO															22.8
	LOWMAN	ID															15.4
	SPOOK	WY															9.5
	MONUMENT VALLEY	AZ															18.4
V.P. ONLY	EDGEMONT	SD															5.0
ANNUAL BUDGET		(FY79 1.4)	10.1 / 11.5	18.2	20.9	27.8	60.7	91.4	115.0	116.0	116.0	116.0	116.0	93.5	8.5	1.9	924.9

PLANNING & DESIGN, NEPA ENGINEERING REMEDIAL ACTION

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law are made by the bill S. 1991, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, an existing law in which no change is proposed is shown in roman):

[Public Law 95-604, 95th Congress]

AN ACT To authorize the Secretary of Energy to enter into cooperative agreements with certain States respecting residual radioactive material at existing sites, to provide for the regulation of uranium mill tallings under the Atomic Energy Act of 1954, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Uranium Mill Tailings Radiation Control Act of 1978".

* * * * * * *

ACQUISITION OF LAND BY SECRETARY

SEC. 106. Where necessary or appropriate in order to consolidate in a safe and environmentally sound manner the location of residual radioactive materials which are removed from processing sites under cooperative agreements under this title, or where otherwise necessary for the permanent disposition and stabilization of such materials in such manner—

(1) the Secretary may acquire land and interests in land for such purposes by purchase, donation, or under any other authority of law or

[(2) the Secretary of the Interior may make available public lands administered by him for such purposes in accordance with other applicable provisions of law.

Prior to acquisition of land under paragraph (1) or (2) of this subsection in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this title or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this Act without the concurrence of the chief administrative officer of such agency.]

(2) the Secretary of the Interior may transfer permanently to the Secretary to carry out the purposes of this Act, public lands under the jurisdiction of the Bureau of Land Management in the vicinity of processing sites in the following counties:

(A) Apache County in the State of Arizona;

(B) Mesa, Gunnison, Moffat, Montrose, Garfield, and San Miguel Counties in the State of Colorado;

(C) Boise County in the State of Idaho;

(D) Billings and Bowman Counties in the State of North Dakota;

(E) Grand and San Juan Counties in the State of Utah;

(F) Converse and Fremont Counties in the State of Wyoming; and

(G) Any other county in the vicinity of a processing site, if no site in the county in which a processing site is located is suitable.

Any permanent transfer of lands under the jurisdiction of the Bureau of Land Management by the Secretary of the Interior to the Secretary shall not take place until the Secretary complies with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) with respect to the selection of a site for a permanent disposition and stabilization of residential radioactive materials. Section 204 of the Federal Land Policy Management Act (43 U.S.C. 1714) shall not apply to this transfer of jurisdiction. Prior to acquisition of land under paragraph (1) or (2) of this subsection in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designed under this title or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this Act without the concurrence of the chief administrative officer of such agency.

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TERMINATION; AUTHORIZATION

SEC. 112. (a) The authority of the Secretary to perform remedial action under this title shall terminate on [the date seven years after the date of promulgation by the Administrator of general standards applicable to such remedial action unless such termination date is specifically extended by an Act of Congress enacted after the date of enactment of this Act.] *September 30, 1994, except that the authority of the Secretary to perform groundwater restoration activities under this title is without limitation.*

(b) The amounts authorized to be appropriated to carry out the purposes of this title by the Secretary, the Administrator, the Commission, and the Secretary of the Interior shall not exceed such amounts as are established in annual authorization Acts for fiscal year 1979 and each fiscal year thereafter applicable to the Department of Energy. Any sums appropriated for the purposes of this title shall be available until expended.

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